

The Fire Safety Code Board of Appeal & Review met in Conference Room 109, 260 West Exchange Street, Providence, RI on Tuesday, August 15, 2006 at 9:00 AM. Present were Chairman Coutu and Commissioners Richard, Blackburn, Preiss and Newbrook. Also present were Thomas B. Coffey, Jr., Executive Director and Assistant Administrative Officer Carol Marsella. The following items were considered.

File #060759: Mr. Joseph Forte for the property located at 947 A & B Dyer Avenue, Cranston. ADSFM Glen Bathgate appeared for the Cranston Fire Marshal's office. Commissioner Richard made a motion, seconded by Commissioner Newbrook, to grant the Applicant's requested relief. The motion was unanimous.

The Board next considered the request for formal interpretation made by State Fire Marshal George Farrell regarding the requirements of the enforcement procedures contained within RIGL 23-28.2-14. After discussion, Commissioner Newbrook made a motion, seconded by Commissioner Blackburn, to approve Blanket Variance 06-12, the text of which follows here.

FIRE SAFETY CODE BOARD OF APPEAL & REVIEW

FORMAL INTERPRETATION 06-12

General Background:

Pursuant to RIGL 23-28.2-14, the State Fire Marshal's Office has developed, and is in the final stages of implementing, a citation system for violations of certain provisions of the state fire code.

RIGL 23-28.2-14 states:

23-28.2-14. Enforcement.

(a) Within the division, there shall be an enforcement unit responsible for the initiation of criminal prosecution of or civil proceedings against any person(s) in violation of the state Fire Safety Code or failure to comply with an order to abate conditions that constitute a violation of the Fire Safety Code, chapters 28.1 - 28.39 of this title, and any rules or regulations added thereunder and/or the general public laws of the state as they relate to fires, fire prevention, fire inspections, and fire investigations. This unit will consist of the state fire marshal, chief deputy state fire marshal, chief of technical services, explosive technician, assistant explosive technicians, and the arson investigative staff, each of whom must satisfactorily complete at the Rhode Island state police training academy an appropriate course of training in law enforcement or must have previously completed a comparable course. To fulfill their responsibilities, this unit shall have and may exercise in any part of the state all powers of sheriffs, deputy sheriffs, town sergeants, chiefs of police, police officers, and constables.

(b) The State Fire Marshal shall have the power to implement a system of enforcement to achieve compliance with the fire safety

code, which shall include inspections as provided for in § 23-28.2-20, the issuance of formal notices of violation in accordance with § 23-28.2-20.1, and the issuance of citations in a form approved by the State Fire Marshal and the Chief Judge of the District Court. The State Fire Marshal, and his or her designee(s) as outlined in this chapter, may use the above systems of enforcement individually or in any combination to enforce the State Fire Safety Code.

(c) The State Fire Marshal and all persons designated specifically in writing by the State Fire Marshal shall have the power to issue the citations referenced in this chapter.

(d) The following categories of violation of the Fire Safety Code that can be identified through inspection shall be considered criminal violations of the Fire Safety Code and be subject to the above issuance of citations:

(1) Impediments to Egress:

(A) Exit doors locked so as to prevent egress.

(B) Blocked means of egress (other than locking and includes any portion of the exit access, exit or exit discharge).

(C) Marking of exits or the routes to exits has become obstructed and is not clearly visible.

(D) Artificial lighting needed for orderly evacuation is not functioning properly (this section does not include emergency lighting).

(2) Maintenance:

(A) Required devices, equipment, system, condition, arrangement, or other features not continuously maintained.

(B) Equipment requiring periodic testing or operation, to ensure its

maintenance, is not being tested or operated.

(C) Owner of building where a fire alarm system is installed has not provided written evidence that there is a testing and maintenance program in force providing for periodic testing of the system.

(D) Twenty-four hour emergency telephone number of building owner or owner's representative is not posted at the fire alarm control unit or the posted number is not current.

(3) Fire Department Access and Water Supply:

(A) The required width or length of a previously approved fire department access road (fire lane) is obstructed by parked vehicles or other impediments.

(B) Fire department access to fire hydrants or other approved water supplies is blocked or impeded.

(4) Fire Protection Systems:

(A) Obstructions are placed or kept near fire department inlet connections or fire protection system control valves preventing them from being either visible or accessible.

(B) The owner, designated agent or occupant of the property has not had required fire extinguishers inspected, maintained or recharged.

(5) Admissions supervised:

(A) Persons responsible for supervising admissions to places of assembly, and/or any sub-classifications thereof, have allowed admissions in excess of the maximum occupancy posted by the State Fire Marshal or his or her designee.

The terms used in the above categories of violation are defined in the definition sections of NFPA 1 and NFPA 101 as adopted pursuant to §

23-28.1-2 of this title.

(e) A building owner, responsible management, designated agent or occupant of the property receiving a citation may elect to plead guilty to the violation(s) and pay the fine(s) through the mail within ten (10) days of issuance, or appear in district court for an arraignment on the citation.

(f) Notwithstanding subsection (e) above, all recipients of third or subsequent citations, within a sixty (60) month period, shall appear in district court for a hearing on the citation. If not paid by mail he, she or it shall appear to be arraigned on the criminal complaint on the date indicated on the citation. If the recipient(s) fails to appear, the district court shall issue a warrant of arrest.

(g) The failure of a recipient to either pay the citation through the mail within ten (10) days, where permitted under this section, or to appear in district court on the date specified shall be cause for the district court to issue a warrant of arrest with the penalty assessed and an additional five hundred dollar (\$500) fine.

(h) A building owner, responsible management, designated agent or occupant of the property who receives the citation(s) referenced in this section shall be subject to civil fine(s), which fine(s) shall be used for fire prevention purposes by the jurisdiction that issues the citation(s), as follows:

(1) A fine of two hundred fifty dollars (\$250) for the first violation within any sixty (60) month period;

(2) A fine of five hundred dollars (\$500) for the second violation within any sixty (60) month period;

- (3) A fine of one thousand dollars (\$1,000) for the third and any subsequent violation(s) within any sixty (60) month period;**
- (i) No citation(s) as defined in this section, shall be issued pursuant to a search conducted under an administrative search warrant secured pursuant to § 23-28.2-20(c) of this code. Any citation mistakenly issued in violation of this subsection (i) shall be void and unenforceable.**
- (j) The District Court shall have full equity power to hear and address these matters.**
- (k) All violations, listed within subsection (d) above, shall further be corrected within a reasonable period of time established by the State Fire Marshal or his or her designee.**

Questions presented by the Office of the State Fire Marshal:

FIRST ISSUE

The first issue presented by the State Fire Marshal's Office is the use of the terms "citation" and "violation" in the law. The Marshal's Office has indicated that terms are not well defined in the law and seem to be use interchangeably. Subsection 23-28.2-14(f) uses the term citation. Subsection 23-28.2-14(h) uses the term violation.

The Marshal's Office has provided the following definitions from Black's Law Dictionary 6th edition:

Citation – A writ issued out of a court of competent jurisdiction, commanding a person therein named to appear on a day named and do something therein mentioned, or show cause why he should not. An order issued by the police, to appear before a magistrate or judge at a later date. A citation is commonly used for minor violations (e.g. traffic violations); thus avoiding having to take the suspect into immediate physical custody.

Violation – Injury; infringement; breach of right, duty or law; ravishment; seduction. The act of breaking, infringing, or transgressing the law.

A classification used by the Model Penal Code for public welfare offenses. A violation is not a crime. M.P.C. section 1.04(5)

In view of these definitions, the Marshal's Office correctly indicates that all of the subsections of 23-28.2-14 (d) are separate violations, and the actual document listing those violation(s) is the citation.

In light of the above, the Marshal's Office notes that according to subsections 23-28.2-14 (f) and 23-28.2-14 (h), actions taken or fines imposed respectively, are dependant on the number of times the citations or violations occur in a 60 month period. The Marshal's Office notes that it would appear that a recipient could receive several citations but never repeat a single violation in that period. Conversely, the office notes, even if the violations are repeated, the recipient may be different. The citation may also include several

violations, which leaves the question of what fine are to be imposed according to 23-28.1-14 (h). In addition, the Fire Marshal's Office notes, the person receiving the citation may be the building owner, responsible management, designated agent, or occupant of the property (see sections 23-28.2-14(e) and 23-28.2-14(h)). In most of the citation categories, it is possible that a different person could be the recipient of the citation each time they are issued.

In view of the specific language of above sections, the Office of the State Fire Marshal has asked the following questions:

1. If there are several violations listed in a single citation, is the fine for the first listed violation \$250 and the second listed violation \$500 etc, or is the fine the same for each violation in the single citation?
2. If a second citation is issued to the same recipient for the same building but the violations are different from those issued in the first citation, are the fines imposed starting at the lowest level (\$250)?
3. If a second citation is issued for the same violations in the same building but the recipient of the citation is different, are the fines imposed starting at the lowest level (\$250)?
4. The wording of subsection 23-28.2-14(h)(3) regarding fines is different from the other sections in that it refers to the third and any subsequent violation(s) within any sixty (60) month period. The

difference is the addition of the terms “and any subsequent violations”. If a second citation is issued and the number of violations in combination with the first citation is four (4), would the fine be \$1000 per violation over two (2) regardless of the fact that the violations may not be repeated on the second citation?

SECOND ISSUE

In most cases the recipient of the citation will be the building owner, responsible management, designated agent, or occupant of the property. In some cases the categories of violation involve requirements over which a tenant may not have any control. These typically involve maintenance issues for equipment that may cover several tenant spaces (i.e. fire alarm, sprinklers). Some of the categories specify who is responsible for compliance. Others do not.

The following questions arise from this issue:

- 1. Is it the intent of this section that persons other than the building owner be held responsible for citations for violations over which they have little or no control?**
- 2. If the answer to the above question is no, for which citation categories would they be responsible?**

THIRD ISSUE

Subsection 23-28.2-14(h) states in part that fines resulting from the issuance of citations shall be used for fire prevention purposes by the jurisdiction that issues the citations. Presently, the only persons physically issuing the citations will be those from the State Fire Marshal's office although the actual issuance may be done at the request of a local assistant deputy state fire marshal.

The following question arises from this issue:

1. If the citation is issued by the State Fire Marshal's Office at the request of a local AHJ, how does the phrase "by the jurisdiction that issues the citation(s)" apply?

Board's Response to State Fire Marshal's Questions:

Question 1.1 If there are several violations listed in a single citation, is the fine for the first listed violation \$250 and the second listed violation \$500 etc, or is the fine the same for each violation in the single citation?

Board's response to Question 1.1: A single citation may have multiple violations and fines. The initial violation in a specific

category, as defined in section 23-28.2-14(d), would carry a fine of two hundred fifty (\$250) dollars. Accordingly, four (4) initial violations and fines, on a single citation, would carry a combined fine of one thousand (\$1,000) dollars (4 X \$250).

Question 1.2 If a second citation is issued to the same recipient for the same building but the violations are different from those issued in the first citation, are the fines imposed starting at the lowest level two hundred fifty (\$250) dollars?

Board's response to Question 1.2: Yes. If a second citation is issued, but the violations listed are from different categories than those listed on the first violation, these new violations would carry initial fines of two hundred fifty (\$250) dollars each. However, if one of the listed violations was previously cited in the first citation, the fine for this particular second violation would now be five hundred (\$500) dollars.

For example, last month a nightclub manager received a citation for overcrowding and a fine of \$250. The Fire Marshal has now returned and given the manager a second citation citing a second overcrowding violation along with two new violations (locked exit doors and failure to maintain fire extinguishers). The second citation would list the second overcrowding violation as a five hundred (\$500) dollar fine and the two new violations as two hundred fifty (\$250)

dollar fines each. Accordingly, the total of the three fines on the second citation would be (\$500 + \$250 + \$250) or one thousand (\$1,000) dollars.

Question 1.3 If a second citation is issued for the same violation in the same building but the recipient of the citation is different, are the fines imposed starting at the lowest level (\$250)?

Board's response to Question 1.3: The Board notes that 23-28.2-14(e) identifies "a building owner, responsible management, designated agent or occupant of the property" as potential recipients of the citation. Accordingly, the answer to this question hinges upon whether the issuance of the first citation actually provided the party, now receiving the second violation, with sufficient notice to correct the cited violation.

For example, if a business owner received the first violation and his business manager received the second violation for the same offense, a five hundred dollar fine would be appropriate because there was either actual or constructive notice, to the business owner, of both violations through his authorized representative. However, if the business owner received the first violation and the building owner, who was never notified of the first offense, receives the second violation, the building owner would not have proper notice and should only be fined two hundred fifty dollars.

The Board notes that the correction of certain violations may be under the control of different parties. For example, a building owner may have more control over a sprinkler or fire alarm system than a business owner. Likewise, a business owner may have more control over the blocking of exits and overcrowding than a building owner. In order to avoid possible notice issues, it is first advisable to determine who has control over the violation and to then specifically serve that same party, or his/her authorized representative, each time the violation is cited.

Question 1.4 The wording of subsection 23-28.2-14(h)(3) regarding fines is different from the other sections in that it refers to the third and any subsequent violation(s) within any sixty (60) month period. The difference is the addition of the terms “and any subsequent violations”. If a second citation is issued and the number of violations in combination with the first citation is four (4), would the fine be \$1000 per violation over two (2) regardless of the fact that the violations may not be repeated on the second citation?

Board’s response to Question 1.4: The above “any subsequent violations” language refers to a thousand dollar fine for the same offense occurring more than a third time in the sixty-month period. For example, a new fourth, fifth or sixth violation of the same code section, within the above sixty (60) month period, would each carry a new one thousand (\$1,000) dollar fine. The purpose of this language is to clarify that the fines do not end with a third violation.

Question 2.1 Is it the intent of this section that persons other than the building owner be held responsible for citations for violations over which they have little or no control?

Board's response to Question 2.1: It is the intent of this section that the enforcing authority would exercise common sense in the issuance of citations. The purpose of the citation is to immediately correct the violation. Accordingly, every effort should be made to serve the citation upon the party who has the ultimate control over the violation. However, as outlined below, if this is not possible, the citation may be served upon any of the parties listed in RIGL 23-28.2-14(e).

Question 2.2 If the answer to the above question is no, which citation categories would they be responsible for?

Board's response to Question 2.2: As outlined above, the purpose of the citation is to immediately correct the violation. Accordingly, every effort should be made to serve the citation upon the party who has ultimate control over the violation.

For example, a building owner may have more control over the building's fire alarm than a leasing business owner. Likewise, a business owner may have more control over overcrowding than a

building owner.

There is no hard and fast rule because these responsibilities can be delegated through leases and other agreements. However, the State Fire Marshal is not bound by any lease or other agreements between the parties and has the statutory authority to cite either the building owner or responsible management or the occupant of the property. The cited party has an obligation to first correct the violation and may then seek reimbursement, under a lease or other contract, from the other parties.

During the review of this matter, as to who the appropriate party would be, the Board referenced the analogy of a fictitious person we shall call “Bill” who borrows the automobile of a second fictitious person we shall call “Gordon”.

If “Bill” is stopped for speeding in “Gordon’s” automobile, “Bill”, and not “Gordon”, would be issued the citation. This is comparable to a business owner or responsible management, rather than a building owner, being issued a citation for overcrowding. It is a question of control.

In the example above, if “Bill” is speeding and has an accident with “Gordon’s” automobile, both “Bill” and “Gordon” share certain liability. This could be the case where the fire alarm system, protecting a nightclub, is not equipped with the capacity to shut down

conflicting sounds upon activation.

Question 3.1 If the citation is issued by the State Fire Marshal's Office at the request of a local AHJ, how does the phrase "by the jurisdiction that issues the citation(s)" apply?

Board's response to Question 3.1: Currently, only the State Fire Marshal's Office issues citations and would therefore be considered the "jurisdiction that issues the citation(s)". Accordingly, all collected fines have been directed, by statute, to be used for fire prevention purposes by that office. If, in the future, citations are issued by Local Fire Marshals, the collected fines may be shared with those offices. The final distribution of the collected fines will most likely be addressed in the upcoming rules and regulations of the Fire Safety Code Board of Appeal & Review.

**Respectfully submitted,
Carol Marsella**